

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
October 28, 2010
Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GONZALO P. MALDONADO,

Defendant - Appellant.

No. 10-3219
(D.C. No. 5:09-CR-40031-SAC-1)

ORDER

Before **BRISCOE**, Chief Judge, **TACHA** and **LUCERO**, Circuit Judges.

This matter is before the court on the government's motion to dismiss and the defendant's response. Upon consideration thereof, the government's motion is **GRANTED**.

In a criminal appeal, the defendant's notice of appeal is to be filed within 14 days of entry of judgment. *See* Fed. R. App. P. 4(b)(1)(A). This rule is an "inflexible claim-processing rule[], which unlike a jurisdictional rule, may be forfeited if not properly raised by the government." *United States v. Garduno*, 506 F.3d 1287, 1291 (10th Cir. 2007) (internal quotation omitted). Here, the defendant filed his notice of appeal more than six months later.

The government properly raised the timeliness issue in its motion to dismiss. Because the government timely objected to [the defendant's] late notice of appeal, this court is bound to dismiss the appeal." *Garduno*, 506 F.3d at 1292.

The defendant contends that he was denied effective assistance of counsel because his attorney did not file an appeal although he had asked her to do so. This argument is properly raised in a 28 U.S.C. § 2255 motion. *See Massaro v. United States*, 538 U.S. 500, 504 (2003); *United States v. Galloway*, 56 F.3d 1239, 1242 (10th Cir. 1995).

The defendant also argues that the court should apply the unique circumstances doctrine to allow his appeal to proceed. Even if the doctrine were applicable in a criminal case, the facts here do not warrant its application. *See Garduno*, 506 F.3d at 1292.

APPEAL DISMISSED. Defense counsel's motion to withdraw is **GRANTED.**

Entered for the Court
ELISABETH A. SHUMAKER, Clerk



Ellen Rich Reiter
Deputy Clerk/Jurisdictional Attorney